CHANGES MADE TO EPCRS
BY REVENUE PROCEDURE 2003-44, IRB 2003-25

REVENUE PROCEDURE 2002-47	REVENUE PROCEDURE 2003-44
Section 1.01 provided, "This revenue procedure updates the comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of §§ 401(a), 403(a), 403(b), or 408(k) of the Internal Revenue Code (Code), but that have not met these requirements for a period of time.**"**	**The Employee Plans Compliance Resolution System (EPCRS) was expanded to apply to SIMPLE IRA Plans. Section 1.01 was revised** to provide, "This revenue procedure updates the comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of §§ 401(a), 403(a), 403(b), 408(k), ***or 408(p)*** of the Internal Revenue Code (Code), but that have not met these requirements for a period of time." NOTE: Sections 1.03, 2.02(2), 3.03, 4.01, 4.03, 5.01(2)(d), 5.01(3), 5.01(4), 6.02, 6.03, 6.10, 7, 10, 11, 12, 13.01, 13.04, 14.01, and 14.02 were also revised (and section 5.05 was added) to incorporate the expansion of EPCRS to include SIMPLE IRA Plans. In addition, relevant sections of Appendices A and B were similarly revised.
Section 1.03 provided an Overview of EPCRS' basic elements. The first bulleted item provided, "Self-correction (SCP). A plan sponsor that has established compliance practices and procedures may, at any time, correct insignificant Operational Failures without paying any fee or sanction. In addition, in the case of a Qualified Plan that is the subject of a favorable determination letter from the Service or in the case of a 403(b) Plan, the plan sponsor generally may correct even significant Operational Failures without payment of any fee or sanction."	**The first bulleted item in section 1.03 was revised to provide that certain SEPs and SIMPLE IRA Plans may correct insignificant Operational Failures under the Self-Correction Program (SCP).** It now provides, "Self-correction (SCP). A Plan Sponsor that has established compliance practices and procedures may, at any time without paying any fee or sanction, correct insignificant Operational Failures *under a Qualified Plan or a 403(b) Plan, or a SEP or a SIMPLE IRA Plan**, provided the SEP or SIMPLE IRA Plan is established and maintained on a document approved by the Service***. In addition, in the case of a Qualified Plan that is the subject of a favorable determination letter from the Service or in the case of a 403(b) Plan, the Plan Sponsor generally may correct even significant Operational Failures without payment of any fee or sanction."

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Section 1.03 provided an Overview of EPCRS' basic elements. The second bulleted item in section 1.03 provided, "Voluntary correction with Service approval (VCP). A plan sponsor, at any time before audit, may pay a limited fee and receive the Service's approval for correction. Under VCP, there are special procedures for certain submissions involving only Operational Failures (Voluntary Correction of Operational Failures (VCO)), and for certain submissions in which limited Operational Failures are being corrected using standardized corrections (Voluntary Correction of Operational Failures Standardized (VCS)). VCP also includes a special procedure that applies to 403(b) Plans (Voluntary Correction of Tax-sheltered Annuity Failures (VCT)), a special procedure for anonymous submissions (Anonymous Submission Procedure), a special procedure for group submissions (Voluntary Correction of Group Failures (VCGroup)), and a special procedure that applies to SEPs (Voluntary Correction of SEP Failures (VCSEP))."	**All of the voluntary correction procedures under EPCRS were combined into a single Voluntary Correction Program (VCP). Specifically, the special procedures formerly known as VCO, VCS, VCT, and VCSEP were eliminated.** Accordingly, the second bulleted item in section 1.03 was revised to provide, "Voluntary correction with Service approval (VCP). A Plan Sponsor, at any time before audit, may pay a limited fee and receive the Service's approval for correction of a Qualified Plan, 403(b) Plan, SEP or SIMPLE IRA Plan. Under VCP, there are special procedures for anonymous submissions and group submissions." NOTES: 1. Anonymous and group submission procedures were retained but modified slightly. Refer to the comments on sections 10.11 and 10.12 for more information on these procedures. 2. Sections 4.01(2), 4.03, 4.05, 4.07, 4.08, 6.03, 10, 11, and 12 were also revised to reflect the consolidation of the voluntary correction procedures into a single Voluntary Correction Program (VCP). In addition, relevant sections of Appendices A and B were similarly revised.
Section 2.02(2) provided, "Future Enhancements. . . . (2) The Service and Treasury are considering expanding the procedures under EPCRS and are interested in receiving comments regarding, among other things, appropriate correction procedures for failures arising under SIMPLE IRAs (under § 408(p)) and § 457(b) plans. Submissions related to SIMPLE IRAs are currently being accepted by the Service on a provisional basis outside of EPCRS. Submissions relating to § 457(b) eligible governmental plans will be accepted by the Service on a provisional basis outside of EPCRS. Submissions relating to other § 457(b) eligible plans may be accepted outside EPCRS as Employee Plans develops experience in the § 457 area."	**Two revisions were made to section 2.02(2):** 1. **The references to SIMPLE IRAs were deleted** because EPCRS was formally expanded to apply to SIMPLE IRA Plans (as previously explained in the entry for section 1.01). **2. A new section regarding plans with § 408(q) "deemed IRA" provisions.** Section 2.02(2) now provides, "Future Enhancements. . . . (2) . . . *The Service is also interested in receiving comments regarding appropriate correction procedures for failures arising under Qualified Plans, 403(b) Plans and § 457(b) plans with § 408(q) "deemed IRA" provisions. Submissions related to Qualified Plans, 403(b) Plans and § 457(b) eligible governmental plans with § 408(q) "deemed IRA" provisions will be accepted by the Service on a provisional basis outside of EPCRS*."

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Section 2 addressed the "EFFECT OF THIS REVENUE PROCEDURE ON PROGRAMS", and subsection (2) addressed "Future enhancements."	**Section 2.02(3) was added.** It provides, "The Service and Treasury are evaluating the availability of the correction procedures under EPCRS for any failures related to a plan's participation in a transaction that is a reportable transaction under Treas. Regs. §1.6011-4(b). Until this evaluation is completed, the Service reserves its right to treat any such failures as ineligible for EPCRS or to deal with any such failures outside EPCRS."
Section 4 addressed "PROGRAM ELIGIBILITY", and section 4.01(1) provided, "Programs for Qualified Plans and 403(b) Plans. (1) SCP. Qualified Plans and 403(b) Plans are eligible for SCP. SCP is available only for Operational Failures."	**Section 4.01(1) was revised to clarify that SEPs and SIMPLE IRA Plans are only eligible to resolve insignificant Operational Failures under SCP.** Section 4.01(1) now provides, "Programs for Qualified Plans and 403(b) Plans. (1) SCP. SCP is available only for Operational Failures. Qualified Plans and 403(b) Plans are eligible for SCP with respect to significant and insignificant Operational Failures. *SEPs and SIMPLE IRA Plans are eligible for SCP with respect to insignificant Operational Failures only.*"
Section 4.02 provided, "Eligibility for other arrangements. (1) A SEP that is maintained under a Plan Document is eligible for SCP with respect to insignificant failures and is eligible for VCP (under the special VCSEP procedure). A SEP is also eligible for Audit CAP. For purposes of EPCRS, a failure to satisfy § 408(k) is treated like the corresponding Qualification Failure. A failure to satisfy § 408(k) includes a failure to satisfy the 50%-eligible-employees election requirement of § 408(k)(6)(A)(ii) and a failure to satisfy the 25-employee limit of § 408(k)(6)(B). (2) The Service may extend EPCRS to other arrangements."	**Section 4.02(1) was deleted** in connection with the consolidation of all voluntary correction procedures into a single Voluntary Correction Program (VCP). **Section 4.02(2) was renumbered as section 4.01(4).** NOTE: Former sections 4.03 through 4.10 were renumbered as 4.02 through 4.09.

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Section 4.04 provided, "Favorable Letter requirement. VCO and the provisions of SCP relating to significant Operational Failures (see section 9) are available for a Qualified Plan only if the plan is the subject of a Favorable Letter." In addition, section 5.01(4)(h) defined Favorable Letter for SEPs. It provided, "In the case of a SEP, the term 'Favorable Letter' means (i) a valid Model Form 5305-SEP or 5305A-SEP adopted by an employer in accordance with the instructions on the applicable Form, (ii) a current favorable opinion letter for a Plan Sponsor that has adopted a prototype SEP which has been amended in accordance with procedures set forth in Rev. Proc. 94-13, 1994-1 C.B. 566, to take into account any applicable changes in the law since the issuance of the opinion letter, or (iii) in the case of an individually designed SEP, a private letter ruling that has been issued for the SEP."	**Two revisions were made to former section 4.04, renumbered as 4.03:** **1. It was revised to incorporate the provisions from section 5.01(4)(h).** **2. Similar provisions were added for SIMPLE IRA Plans.** Section 4.03 provides, "Favorable Letter requirement. *T*he provisions of SCP relating to significant Operational Failures (see section 9) are available for a Qualified Plan only if the plan is the subject of a Favorable Letter. *The provisions of SCP relating to insignificant Operational Failures (see section 8) are available for a* ***SEP*** *but only if the plan document consists of either (i) a valid Model Form 5305-SEP or 5305A-SEP adopted by an employer in accordance with the instructions on the applicable form, or (ii) a current favorable opinion letter for a Plan Sponsor that has adopted a prototype SEP which has been amended in accordance with the procedures set forth in Rev. Proc. 2002-10, 2002-4 I.R.B. 401. The provisions of SCP relating to insignificant Operational Failures (see section 8) are available for a* ***SIMPLE IRA Plan*** *but only if the plan document consists of either (i) a valid Model Form 5305-SIMPLE or 5304-SIMPLE adopted by an employer in accordance with the instructions on the applicable form, or (ii) a current favorable opinion letter for a Plan Sponsor that has adopted a prototype SIMPLE which has been amended in accordance with the procedures set forth in Rev. Proc. 2002-10, 2002-4 I.R.B. 401.*" NOTE: Former section 5.01(4)(h) was deleted.

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Section 4.07 provided, "Submission for a determination letter. In a case in which correction of a Qualification Failure includes correction of a Plan Document Failure or correction of an Operational Failure by plan amendment, as permitted under section 4.06, other than adoption of an amendment designated by the Service as a model amendment or standardized prototype plan, the amendment must be submitted to the Service for approval using the appropriate application form (i.e., the Form 5300 series or, if permitted, Form 6406) to ensure that the amendment satisfies applicable qualification requirements." In addition, section 9.03 provided, "Correction by plan amendment. In order to complete correction by plan amendment (as permitted under section 4.06) during the correction period, the appropriate application (i.e., the Form 5300 series or Form 6406) must be submitted before the end of the correction period."	**Three revisions were made to former section 4.07, renumbered as 4.06:** 1. **It was revised to clarify that determination letter applications will also be required for Demographic Failures that are corrected under VCP by plan amendment**. NOTE: Sections 6.05, 10.06, and 11.03(3) were similarly revised. 2. **It was revised to update the description of amendments for which a determination letter application will not be required.** NOTE: Sections 6.05, 10.06, and 11.03(3) were similarly revised. **3. A new sentence was added to reinforce the requirement specified in section 9.03.** Section 4.06 provides, "Submission for a determination letter. In a case in which correction of a Qualification Failure includes correction of a Plan Document Failure *or Demographic Failure*, or an Operational Failure by plan amendment, as permitted under section *4.05*, other than *the* adoption of an amendment designated by the Service as a model amendment or *the adoption of a prototype or volume submitter plan for which the Plan Sponsor has reliance on the plan's opinion or advisory letter as provided in Rev. Proc. 2003-6, 2003-1 I.R.B. 191*, the amendment must be submitted to the Service for approval using the appropriate application form (i.e., the Form 5300 series or, if permitted, Form 6406) to ensure that the amendment satisfies applicable qualification requirements. *In the case of a plan amendment under SCP, as permitted under section 4.05(2), the determination letter application must be submitted before the end of the SCP correction period in section 9.02.*"
Section 4.10 provided, "Diversion or misuse of plan assets. SCP, VCP, and Audit CAP are not available to correct failures relating to the diversion or misuse of plan assets."	**As mentioned (two items) above, section 4.10 was renumbered as section 4.09.**

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Section 4 addressed the issues of "Program Eligibility."	**A new section, numbered as 4.10, was added**, and it provides, "***EGTRRA nonamenders***. EPCRS is available for correction of Qualified Plans that have failed to adopt good faith plan amendments for the ***Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA)*** within the period described in Notice 2001-42, 2001-30 I.R.B. 70. In the case of a terminated Qualified Plan, the VCP submission must include the EGTRRA amendment(s) and Form 5310. The Service will process the VCP submission and, when approved, issue a compliance statement and determination letter on the terminated plan. In the case of all other EGTRRA good faith nonamenders, a Plan Sponsor may submit under VCP to receive a compliance statement. The Plan Sponsor must adopt EGTRRA good faith amendment(s) within the time period set forth in the compliance statement. If adopted, the plan will not be treated as failing to adopt the EGTRRA good faith amendment(s) in a timely manner. Because the Service's determination letter program has not opened for EGTRRA amendments, a determination letter will not be issued as part of the VCP submission. In addition, Plan Sponsors may have to amend the plan further within the EGTRRA remedial amendment period as provided in Notice 2001-42. Failure to amend, if required, will result in a failure requiring a subsequent VCP submission."
Section 5.01(2)(a) defined the term "Plan Document Failure."	**The definition of Plan Document Failure, in section 5.01(2)(a), was revised to include the following sentence:** "In addition, if a plan has not been timely or properly amended during an applicable remedial amendment period for adopting good faith amendments for statutory changes as provided by the Service, but the plan is operated as though the good faith amendments were adopted, then for purposes of EPCRS, the plan is considered to have a Plan Document Failure."

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Section 5.01(2)(d) defined the term "Employer Eligibility Failure."	**The definition of Employer Eligibility Failure in section 5.01(2)(d) was revised to remove all references to § 408(k).** NOTE: Refer to the entry for former section 6.08.
Section 5.01(3) defined the term "Excess Amount."	**The definition of Excess Amount in section 5.01(3) was revised to remove all definitions that specifically pertained to SEPs or SARSEPs.** NOTE: Refer to the entry for former section 6.08.
Section 5.01(4) defined the term "Favorable Letter", and it outlined several specific methods of satisfying the requirements for a Favorable Letter.	**A new definition of Favorable Letter, numbered as 5.01(4)(b), was added for Qualified Plans.** It provides, " . . . A plan has a current favorable determination letter, opinion letter, or advisory letter if . . . : (b) The plan has a favorable determination letter that considers GUST, excluding CRA, and the Plan Sponsor has by the latest of (i) the end of the first plan year beginning on or after January 1, 2002, (ii) the end of the plan's GUST remedial amendment period, or (iii) June 30, 2003, amended the plan to comply with ***CRA***." NOTE: Former sections 5.01(4)(b) through 5.01(4)(e) were renumbered as 5.01(4)(c) through 5.01(4)(f).

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Section 5.01(4)(b) provided, " . . . A plan has a current favorable determination letter, opinion letter, or advisory letter if . . . : (b) The plan (i) either has a favorable determination letter, opinion letter, or notification letter for a regional prototype plan that considers the Tax Reform Act of 1986 ("TRA '86") or was initially adopted or effective after December 7, 1994, and, (ii) the Plan Sponsor has by the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001, either submitted an application for a determination letter on GUST, or has adopted or certified that it intends to adopt a master and prototype plan (includes former regional prototype plans) or volume submitter plan, that has been submitted for a GUST opinion letter or advisory letter by December 31, 2000.**"**	**The existing definition of Favorable Letter for Qualified Plans in former section 5.01(4)(b) was revised and renumbered as 5.01(4)(c).** It now provides, " . . . A plan has a current favorable determination letter, opinion letter, or advisory letter if . . . : (b) The plan either has a favorable determination letter, opinion letter, or notification letter for a regional prototype plan that considers the Tax Reform Act of 1986 ("TRA '86") or was initially adopted or effective after December 7, 1994, and the Plan Sponsor has by the later of February 28, 2002, or the last day of the first plan year beginning on or after January 1, 2001, either, ***(i)*** submitted an application for a determination letter on GUST, or, ***(ii)*** has adopted or certified that it intends to adopt a master ***or prototype plan or*** volume submitter plan, that was submitted for a GUST opinion letter or advisory letter by December 31, 2000 ***and does adopt a master or prototype plan or volume submitter plan in accordance with the procedures set forth in Rev. Proc. 2002-73, 2002-49 I.R.B. 932***."
Section 5.01(4)(f) defined Favorable Letter for governmental plans or non-electing church plans described in Rev. Proc. 99-23, 1999-16 I.R.B. 5.	**The definition of Favorable Letter for governmental plans or non-electing church plans described in Rev. Proc. 99-23, previously set forth in former section 5.01(4)(f), was deleted**.
Section 5.01(4)(h) defined Favorable Letter for SEPs.	As mentioned in the entry pertaining to former section 4.04 (renumbered as section 4.03), the provisions of section 5.01(4)(h) were moved to and incorporated in the new section 4.03. **Section 5.01(4)(h) was deleted.**
Section 5.01(6) defined the term "Overpayment." It provided, "The term "Overpayment" means a distribution to an employee or beneficiary that exceeds the employee's or beneficiary's benefit under the terms of the plan because of a failure to comply with plan terms that implement § 401(a)(17), § 401(m) (but only with respect to the forfeiture of nonvested matching contributions that are excess aggregate contributions), § 411(a)(3)(G), or § 415. An Overpayment does not include a distribution of any Excess Amount described in section 5.01(4)(b) through (h)."	**Section 5.01(6) was revised to clarify the types of distributions that classify as Overpayments.** It now provides, "The term "Overpayment" means a distribution to an employee or beneficiary that exceeds the employee's or beneficiary's benefit under the terms of the plan, ***including a distribution that results from a failure to comply with plan terms*** that implement § 401(a)(17), § 401(m) . . . , § 411(a)(3)(G), or § 415. An Overpayment does not include a distribution of any Excess Amount described in section 5.01(3)(b) through (h)."

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Section 5 defined certain terms relating to plans that could resolve failures under EPCRS.	**A new section, numbered as 5.05, was added to define "SIMPLE IRA Plan."** It provides, "The term 'SIMPLE IRA Plan' means a plan intended to satisfy the requirements of § 408(p)."
Section 5.03 defined the term "Under Examination." Section 5.03(3) elaborated on the definition of Under Examination and provided, "An Employee Plans examination also includes a case in which a Plan Sponsor has submitted a Form 5310 and the Employee Plans agent notifies the Plan Sponsor, or a representative, of possible Qualification Failures, whether or not the Plan Sponsor is officially notified of an "examination." This would include a case where, for example, a Plan Sponsor has applied for a determination letter on plan termination, and an Employee Plans agent notifies the Plan Sponsor that there are partial termination concerns."	**Two revisions were made to section 5.03(3):** 1. **It was revised to clarify that a plan, for which any determination letter application (i.e., not just Form 5310) has been submitted, may be considered Under Examination**. 2. **It was revised to provide guidance regarding and examples of situations in which the Service discovers one or more Qualification Failures during its review of the plan.** Section 5.03(3) now provides, "An Employee Plans examination also includes a case in which a Plan Sponsor has submitted ***any Form 5300 series form*** and the Employee Plans agent notifies the Plan Sponsor, or a representative, of possible Qualification Failures, whether or not the Plan Sponsor is officially notified of an 'examination.' This would include a case where, for example, a Plan Sponsor has applied for a determination letter on plan termination, and an Employee Plans agent notifies the Plan Sponsor that there are partial termination concerns. ***In addition, if, during the review process, the agent requests additional information that indicates the existence of a Qualification Failure(s) not previously identified by the Plan Sponsor, the plan is considered under an Employee Plans examination. The fact that a Plan Sponsor voluntarily submits a determination letter application does not constitute a voluntary identification of Qualification Failures to the Service. In order to be eligible to perfect a determination letter application into a VCP submission, the Plan Sponsor (or the authorized representative) must identify each Qualification Failure, in writing, to the reviewing agent before the agent recognizes the existence of the Qualification Failure(s) and/or addresses the Qualification Failure(s) in communications with the Plan Sponsor (or the authorized representative)***."

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Section 6.02(2) provided, "Reasonable and appropriate correction. The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction for the failure. For Qualified Plans, any correction method permitted under Appendix A or Appendix B is deemed to be a reasonable and appropriate method of correcting the related Qualification Failure. Any correction method permitted under Appendix A applicable to a 403(b) Plan is deemed to be a reasonable and appropriate method of correcting the related 403(b) Failure. Whether any other particular correction method is reasonable and appropriate is determined taking into account the applicable facts and circumstances . . . ."	**Section 6.02(2) was revised to provide guidance regarding reasonable and appropriate correction for SEPs and SIMPLE IRA Plans**. It now provides, "Reasonable and appropriate correction. The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction for the failure. For Qualified Plans, any correction method permitted under Appendix A or Appendix B is deemed to be a reasonable and appropriate method of correcting the related Qualification Failure. ***Any correction method permitted under Appendix A or Appendix B applicable to a 403(b) Plan, a SEP, or a SIMPLE IRA Plan is deemed to be a reasonable and appropriate method of correcting the related failure***. Whether any other particular correction method is reasonable and appropriate is determined taking into account the applicable facts and circumstances . . . ." NOTE: Appendices A and B were similarly revised.
Section 6.02(5)(a) described the first of four "Special exceptions to full correction." It provided, "Reasonable estimates. If it is not possible to make a precise calculation, or the probable difference between the approximate and the precise restoration of a participant's benefits is insignificant and the administrative cost of determining precise restoration would significantly exceed the probable difference, reasonable estimates may be used in calculating appropriate correction."	**Section 6.02(5)(a) was revised to clarify the special exception to full correction for imprecise or unavailable data.** It now provides, "Reasonable estimates. If *either, (i)* it is possible to make a precise calculation *but* the probable difference between the approximate and the precise restoration of a participant's benefits is insignificant and the administrative cost of determining precise restoration would significantly exceed the probable difference *or (ii) it is not possible to make a precise calculation (for example, where it is impossible to provide plan data)*, reasonable estimates may be used in calculating appropriate correction."

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Section 6.02(5)(c) described the third of four "Special exceptions to full correction." It provided, "Recovery of small Overpayments. Generally, for a submission under VCP, if the total amount of an Overpayment made to a participant or beneficiary is $100 or less, the Plan Sponsor is not required to seek the return of the Overpayment from the participant or beneficiary."	**Section 6.05(c) was revised to clarify the Plan Sponsor's obligations under this special exception to full correction.** It now provides, "Recovery of small Overpayments. Generally, for a submission under VCP, if the total amount of an Overpayment made to a participant or beneficiary is $100 or less, the Plan Sponsor is not required to seek the return of the Overpayment from the participant or beneficiary***, but is required to notify the participant or beneficiary that the Overpayment is not eligible for favorable tax treatment accorded to distributions from Qualified Plans (and, specifically, is not eligible for tax-free rollover). See section 6.06(1) for such notice requirements.***"
Section 6 described EPCRS' "Correction principles; rules of general applicability." In addition, Appendix A, section .07 provided, "Failure to obtain participant and/or spousal consent for a distribution subject to the participant and spousal consent rules under §§ 401(a)(11), 411(a)(11) and 417."	**A new section, numbered as 6.04, was added to provide guidance regarding correction of failures to obtain the required spousal consent under §§ 401(a)(11) and 417.** It provides, "Normally, the correction method under VCP for a failure to obtain spousal consent for a distribution subject to the spousal consent rules under §§ 401(a)(11) and 417 is similar to the correction method described in Appendix A .07. The Plan Sponsor must notify the affected participant and spouse (to whom the participant was married at the time of the distribution) so that the spouse can provide spousal consent to the distribution actually made or the participant may repay the distribution and receive a qualified joint and survivor annuity. In the event that spousal consent to the prior distribution cannot be obtained because the spouse refuses to consent, does not respond to the notice provided or because the spouse cannot be located, the spouse is entitled to a benefit under the plan equal to the portion of the qualified joint and survivor annuity that would have been payable to the spouse upon the death of the participant had a qualified joint and survivor annuity been provided to the participant under the plan at his or her retirement. Such spousal benefit must be provided if a claim is made by the spouse." NOTE: Former sections 6.04 and 6.05 were renumbered as 6.05 and 6.06.

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Section 6.05(2)(b) provided, "Treatment of Excess Amounts under 403(b) Plans. . . . (b) Retention of Excess Amounts. Under VCT and Audit CAP, Excess Amounts will be treated as corrected (even though the Excess Amounts are retained in the 403(b) Plan) if the following requirements are satisfied. Excess Amounts arising from a § 415 failure, adjusted for earnings through the date of correction, must reduce affected participants' applicable § 415 limit for the year following the year of correction (or for the year of correction if the Plan Sponsor so chooses), and subsequent years, until the excess is eliminated."	**As mentioned immediately above, former section 6.05(2)(b) was renumbered as 6.06(2)(b). In addition, the first sentence was revised to clarify the specific situations in which the Excess Amounts would be considered corrected.** Section 6.06(2)(b) provides, "Treatment of Excess Amounts under 403(b) Plans. . . . (b) Retention of Excess Amounts. ***If either the employer or the funding agent are unable to make a correcting distribution,*** Excess Amounts will be treated as corrected (even though the Excess Amounts are retained in the 403(b) Plan) if the following requirements are satisfied. . . ."
Section 6 described EPCRS' "Correction principles; rules of general applicability."	**A new section, numbered as 6.07, was added to provide guidance regarding the reporting of plan loan failures.** It provides, "Special rules relating to reporting plan loan failures. As part of VCP, in the event of a failure relating to a loan to a participant made from a Qualified Plan or a 403(b) Plan that is treated as received as a distribution for purposes of § 72(p) (a deemed distribution), the distribution may be reported on Form 1099-R for the year of correction with respect to the affected participant." NOTE: Former sections 6.06 through 6.10 were renumbered as 6.08 through 6.12.
Section 6.08 provided guidance with respect to the "Correction for SEPS."	**As mentioned immediately above, former section 6.08 was renumbered as 6.10. In addition, four revisions were made:** 1. **The correction guidance was expanded to apply to SIMPLE IRA Plans.** 2. **A general definition of Employer Eligibility Failure for SEPs and SIMPLE IRA Plans was added.** 3. **A general definition of Excess Amount for SEPs and SIMPLE IRA Plans was added.** 4. **A new section was added to provide guidance with respect to the Treatment of Excess Amounts under SEPs or SIMPLE IRA Plans.** It includes subsections regarding the "Distribution of Excess Amounts", the "Retention of Excess Amounts", and "De minimis Excess Amounts."

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Section 10.03 provided, "Availability of correction of a terminated plan. Correction of Qualification Failures in a terminated plan may be made under VCP."	**Section 10.03 was revised to clarify that all terminated plans can resolve failures under VCP.** It now provides, "Availability of correction of a terminated plan. Correction of Qualification Failures in a terminated plan may be made under VCP, ***whether or not the plan trust is in existence***."
Section 10.10 provided, "Processing of determination letter applications not submitted under VCP. (1) The Service may process a determination letter application submitted under the determination letter program (including an application requested on Form 5310) concurrently with a VCP submission for the same plan. However, issuance of the determination letter in response to an application made on a Form 5310 will be suspended pending the closure of the VCP submission. (2) A submission of a plan under the determination letter program does not constitute a submission under VCP. Thus, a Plan Sponsor that discovers a Qualification Failure in its plan must make a separate application under VCP. If the failure is discovered by the Service in connection with a determination letter application, the agent may issue a closing agreement with respect to the failures identified or, if appropriate, refer the case to Employee Plans Examinations. In either case, the fee structure in section 12, applicable to VCP, will not apply. Instead, the fee structure in section 14 relating to Audit CAP will apply. (See sections 13 and 14.)"	**Section 10.10 was renumbered as 10.07**, and it now provides, "***Determination letter applications not related to a VCP submission***. (1) The Service may process a determination letter application submitted under the determination letter program (including an application requested on Form 5310) concurrently with a VCP submission for the same plan. However, issuance of the determination letter in response to an application made on a Form 5310 will be suspended pending the closure of the VCP submission. (2) A submission of a plan under the determination letter program does not constitute a submission under VCP. ***If the Service in connection with a determination letter application discovers a Qualification Failure***, the agent may issue a closing agreement with respect to the failures identified or, if appropriate, refer the case to Employee Plans Examinations. In either case, the fee structure in section 12, applicable to VCP, will not apply. Instead, the fee structure in section 14 relating to Audit CAP will apply. (See sections 13 and 14.) ***If the Plan Sponsor discovers a Qualification Failure, the Plan Sponsor should submit an application under VCP to correct the failure.***" NOTE: Former sections 10.07 through 10.09 were renumbered as 10.08 through 10.10.

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Section 10.07(4)(b) provided, "Additional failures discovered after initial submission. . . . (b) If the Service discovers an unrelated Qualification or 403(b) Failure while the request is pending, the failure generally will be added to the failures under consideration. However, the Service retains the discretion to determine that a failure is outside the scope of the voluntary request for consideration because it was not voluntarily brought forward by the Plan Sponsor. In this case, if the additional failure is significant, all aspects of the plan may be examined and the rules pertaining to Audit CAP will apply. (See sections 13 and 14.)"	**As mentioned immediately above, former section 10.07 was renumbered as 10.08. In addition, paragraph (4)(b) was revised to clarify the Service's discretion to determine that a failure is outside the scope of the VCP request.** It now provides, "Additional failures discovered after initial submission. . . . (b) If the Service discovers an unrelated Qualification or 403(b) Failure while the request is pending, the failure generally will be added to the failures under consideration. However, the Service retains the discretion to determine that a failure is outside the scope of the voluntary request for consideration because ***the Plan Sponsor did not voluntarily bring it forward***. In this case, if the additional failure is significant, all aspects of the plan may be examined and the rules pertaining to Audit CAP will apply. (See sections 13 and 14.)"
Section 10.07(6) provided, "Failure to reach resolution. If the Service and the Plan Sponsor cannot reach agreement with respect to the submission, all aspects of the plan may be examined, and the Service may refer the submission to Employee Plans Examinations."	**Former section 10.07, paragraph (6) (renumbered as 10.08(6)) was significantly revised.** Section 10.08(6) now provides, "Failure to reach resolution. If the Service and the Plan Sponsor cannot reach agreement with respect to the submission, *the matter will be closed, the compliance fee will not be returned, and the case may be referred* to Employee Plans Examinations. *In the case of an Anonymous Submission that fails to reach resolution under EPCRS, the Service will refund 50% of the applicable VCP fee. See section 12.02 for the VCP fee.*"
Section 10.07(8) provided, "Timing of correction. The Plan Sponsor must implement the specific corrections and administrative changes set forth in the compliance statement within 150 days of the date of the compliance statement. Any request for an extension of this time period must be made in advance and in writing and must be approved by the Service."	**Former section 10.07, paragraph (8) (renumbered as 10.08(8)) was revised to clarify the time period in which an extension of the 150-day period may be requested.** Section 10.08(8) now provides, "Timing of correction. The Plan Sponsor must implement the specific corrections and administrative changes set forth in the compliance statement within 150 days of the date of the compliance statement. Any request for an extension of this time period must be made *prior to the expiration of the correction period* and in writing and must be approved by the Service."

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Section 10.07(9) provided, "Modification of compliance statement. . . . if the requested modification is minor and is postmarked no later than 30 days after the compliance statement is issued, the compliance fee for the modification will be the lesser of the original compliance fee or $1,250.**"**	**Former section 10.07, paragraph (9) (renumbered as 10.08(9)) was revised to increase the compliance fee for modifying a previously issued compliance statement.** Section 10.08(9) now provides, "Modification of compliance statement. . . . if the requested modification is minor and is postmarked no later than 30 days after the compliance statement is issued, the compliance fee for the modification will be the lesser of the original compliance fee or ***$3,000***."
Section 10.11 provided guidance regarding "Special rules relating to VCO." Section 10.12 provided guidance regarding "Special rules relating to VCS." Lastly, section 10.14 provided guidance regarding "Special rules relating to VCT."	**Sections 10.11, 10.12, and 10.14 were deleted** as a result of the consolidation of all voluntary correction procedures into a single Voluntary Correction Program ("VCP").
Section 10.13 provided guidance regarding "Special rules relating to Anonymous (John Doe) Submission Procedure."	**Section 10.13 was renumbered as 10.11 and was retitled as "Special rules relating to Anonymous (John Doe) Submissions."**
Section 10.13(1) provided, "Special rules relating to Anonymous (John Doe) Submission Procedure. (1) The Anonymous Submission Procedure permits submission of a Qualified or 403(b) Plan under VCP without initially identifying the applicable plan(s), the Plan Sponsor(s), or the Eligible Organization. . . . For purposes of processing the submission, the State of the Plan Sponsor must be identified in the initial submission. Once the Service and the plan representative reach agreement with respect to the submission, the Service will contact the plan representative in writing indicating the terms of the agreement. The Plan Sponsor will have 21 calendar days from the date of the letter of agreement to identify the plan and Plan Sponsor. If the Plan Sponsor does not submit the identifying material (including the power of attorney statement and the penalty of perjury statement) within 21 calendar days of the letter of agreement, the matter will be closed, and the compliance fee will not be returned."	**Two revisions were made to former section 10.l3(1), renumbered as 10.11(1):** 1. The Anonymous Submission procedures were **expanded to include SEPs and SIMPLE IRA Plans.** 2. Guidance was provided regarding **when to submit related determination letter applications.** Section 10.11(1) provides, "Special rules relating to Anonymous (John Doe) Submission Procedure. (1) The Anonymous Submission procedure permits submission of Qualified Plans, 403(b) Plans, ***SEPs and SIMPLE IRA Plans*** under VCP without initially identifying the applicable plan(s), the Plan Sponsor(s), or the Eligible Organization. . . . ***In addition, if a determination letter application will be requested as part of the submission, the determination letter application should not be submitted until the time all identifying information is provided to the Service.*** For purposes of processing the submission, . . ."

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Section 10.13(2) provided, "Special rules relating to Anonymous (John Doe) Submission Procedure. . . . (2) Notwithstanding section 10.05, until the plan(s) and Plan Sponsor(s) are identified to the Service, a submission under this subsection does not preclude or impede an examination of the Plan Sponsor or its plan(s). Thus, a plan submitted under the Anonymous Submission Procedure that comes Under Examination prior to the date the plan(s) and Plan Sponsor(s) identifying materials are received by the Service will no longer be eligible for either the Anonymous Submission Procedure or VCP."	**Former section 10.13(2), renumbered as 10.11(2), was revised slightly.** It now provides, "Special rules relating to Anonymous (John Doe) Submission Procedure. . . . (2) Notwithstanding section 10.05, until the plan(s) and Plan Sponsor(s) are identified to the Service, a submission under this subsection does not preclude or impede an examination of the Plan Sponsor or its plan(s). Thus, a plan submitted under the Anonymous Submission *p*rocedure that comes Under Examination prior to the date the plan(s) and Plan Sponsor(s) identifying materials are received by the Service will no longer be eligible ***under VCP***."
Section 10.13(3) provided, "Special rules relating to Anonymous (John Doe) Submission Procedure. . . . (3) The Anonymous Submission Procedure is extended indefinitely."	**Former section 10.13(3) was deleted because the Anonymous Submission procedure is now considered to be an ongoing part of VCP.**
Section 10.15 provided guidance regarding "Special rules relating to VCGroup."	**Section 10.15 was renumbered as 10.12 and was retitled as "Special rules relating to Group Submissions." In addition, the Group Submission procedures were expanded to include SEPs and SIMPLE IRA Plans.**
Section 10.15(2) provided, "Special rules relating to VCGroup. . . . (2) Eligible Organizations. For purposes of VCGroup, the term 'Eligible Organization' means either (a) a Sponsor (as that term is defined in section 4.09 of Rev. Proc. 2000-20 2000-1 C.B. 553) of a master or prototype plan, (b) an insurance company or other entity that has issued annuity contracts or provides services with respect to assets for 403(b) Plans, or (c) an entity that provides its clients with administrative services with respect to Qualified Plans or 403(b) Plans. An Eligible Organization is not eligible for VCGroup unless the submission includes a failure resulting from a systemic error involving the Eligible Organization that affects at least 20 plans and that results in at least 20 plans implementing correction. If, at any time before the Service provides an unsigned compliance statement, the number of plans falls below 20, the Eligible Organization must notify the Service that it is no longer eligible for VCGroup (and the compliance fee will be retained)."	**The definition of Eligible Organization in former section 10.15(2), renumbered as 10.12(2), was revised.** Section 10.12(2) provides, "Special rules relating to Group Submissions. . . . (2) Eligible Organizations. For purposes of a *Group Submission*, the term 'Eligible Organization' means either (a) a Sponsor . . . of a master or prototype plan, (b) an insurance company . . . , or (c) an entity that provides its clients with administrative services with respect to Qualified Plans, 403(b) Plans, *SEPs or SIMPLE IRA Plans*. An Eligible Organization is not eligible *to make a Group Submission* unless the submission includes a failure resulting from a systemic error involving the Eligible Organization . . . . If, at any time before the Service ***issues the*** compliance statement, the number of plans falls below 20, the Eligible Organization must notify the Service that it is no longer eligible *to make a Group Submission* (and the compliance fee ***may*** be retained)."

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Section 10.15(3) provided guidance regarding "Special VCGroup procedures." Section 10.15(3)(b) provided, "Special VCGroup procedures. . . . (b) When an Eligible Organization under VCGroup receives an unsigned compliance statement on the proposed correction and agrees to the terms of the compliance statement, the Eligible Organization must return to the Service within 120 calendar days not only the signed compliance statement and any additional compliance fee under section 12.06, but also a list containing . . . (iii) a power of attorney (which may be a limited power of attorney) from each of the Plan Sponsors authorizing the Eligible Organization or its representative to act on the Plan Sponsor's behalf with respect to the items in the compliance statement and . . . ."	**Former section 10.15(3), renumbered as 10.12(3), was revised to replace the power of attorney requirement for affected plans with new notice requirements. Specifically:** • **A new paragraph, inserted as (b), was added to implement the new notice requirements for Eligible Organizations.** • **Former paragraph (b), renamed as paragraph (c), was revised to replace the requirement for the Eligible Organization to obtain a power of attorney for each affected plan with a requirement for the Eligible Organization to obtain a certification that each affected Plan Sponsor received notice of the Group Submission.** Section 10.12(3)(b) provides, "Special rules relating to Group Submissions. . . . (3) Special Group Submission procedures. . . . (b) *The Eligible Organization must provide notice to all Plan Sponsors of the plans included in the Group Submission. The notice must be provided at least 90 days before the Eligible Organization provides the Service with the information required in section 10.12(3)(c). The purpose of the notice is to provide each Plan Sponsor with information relating to the Group Submission request. The notice should explain the reason for the Group Submission and inform the Plan Sponsor that the Plan Sponsor's plan will be included in the Group Submission unless the Plan Sponsor responds within the 90-day period to exclude the Plan Sponsor's plan from the Group Submission.*"
Section 10.17 provided guidance regarding the submission of VCP requests for "Multiemployer and multiple employer plans."	**Section 10.17 was renumbered as 10.13.**

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Section 11.02 described the "Submission requirements" for a VCP request. In other words, it specified the information that must be included within the body of the letter/request.	**A new item was added to the list of submission requirements for a VCP request, as described in section 11.02.** It was numbered as 11.02(1), and it provides, "The letter from the Plan Sponsor or the Plan Sponsor's representative must contain the following: (1) *A statement identifying* ***the type of plan submitted*** *(e.g., Qualified Plan, 403(b) Plan, SEP, or SIMPLE IRA Plan) and, if applicable,* ***whether the submission is a Group Submission, an Anonymous Submission or a nonamender submission.***" NOTE: Former sections 11.02(1) through 11.02 (11) were renumbered as 11.02(2) through 11.02(12).
Section 11.02(10) provided, "Submission requirements. The letter from the Plan Sponsor or the Plan Sponsor's representative must contain the following: . . . (10) If a submission includes a failure that refers to Transferred Assets and occurred prior to the transfer, a description of the transaction (including the dates of the employer change and the plan transfer)."	**As mentioned immediately above, section 11.02(10) was renumbered as 11.02(11). In addition, it was revised to clarify those failures to which this item applies.** It now provides, "The letter from the Plan Sponsor or the Plan Sponsor's representative must contain the following: . . . (11) If a submission includes a failure that ***relates to Transferred Assets and the failure*** occurred prior to the transfer, a description of the transaction (including the dates of the employer change and the plan transfer)."
Section 11.02(11) provided, "Submission requirements. The letter from the Plan Sponsor or the Plan Sponsor's representative must contain the following: . . . (11) A statement (if applicable) that the plan is currently being considered in a determination letter application. If the request for a determination letter is made while a request for consideration under VCP is pending, the Plan Sponsor must update the VCP request to add this information."	**As mentioned (two items) above, section 11.02(11) was renumbered as 11.02(12). In addition, it was revised to clarify that this item only pertains to determination letter applications that are not related to the VCP request that is being submitted.** It now provides, "The letter from the Plan Sponsor or the Plan Sponsor's representative must contain the following: . . . (12) A statement (if applicable) that the plan is currently being considered in a determination letter *application that is not related to the VCP* application. If the request for a determination letter is made while a request for consideration under VCP is pending, the Plan Sponsor must update the VCP request to add this information."

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Section 11.03 provided, "Submission requirements under special procedures. The letter from the Plan Sponsor or the Plan Sponsor's representative must also contain the following: (1) VCS. In the case of a VCS submission, a statement that it is a VCS request, ... (2) VCT. In the case of a VCT submission, a statement that . . . . (3) VCGroup. A VCGroup submission . . . . (4) VCSEP. In the case of an VCSEP submission, a statement that it is a VCSEP request."	**Three revisions were made to former section 11.03:** 1. **Sections 11.03(1) and 11.03(4) were deleted** to reflect the consolidation of all voluntary correction procedures into a single Voluntary Correction Program (VCP). 2. **Section 11.03(2) was renumbered as 11.02(13)** and retitled as "***In the case of a 403(b) Plan submission***, ..." 3. **Section 11.03(3) was renumbered as 11.02(14)** and retitled as "***A Group submission must*** . . ." NOTE: Former sections 11.04 through 11.13 were renumbered as 11.03 through 11.12.
Section 11.04 described the "Required documents" that must accompany a VCP request.	**As mentioned immediately above, former section 11.04 was renumbered as 11.03.**
Section 11.04(1) provided, "Required Documents. A VCP submission must be accompanied by the following documents: (1) Form 5500 or similar information. (a) VCP. In the case of the general procedures under VCP, a copy of the most recently filed Form 5500 series return. (b) VCO and VCS. In the case of a VCO or VCS submission, a copy of the first page, a copy of the page containing employee census information . . . of the most recently filed Form 5500 series return. (c) Anonymous submission. In the case of a submission under the Anonymous Submission Procedure, the employee census and plan asset information may be redacted and replaced by numbers that are rounded up. (d) VCT. In the case of a VCT submission, if Form 5500 is inapplicable, the information generally included on the first two pages of Form 5500, including the name and number of the plan, and the employer's Employer Identification Number. (e) VCSEP. In the case of a VCSEP submission, if Form 5500 is inapplicable, the information generally included on the first two pages of Form 5500, including the name and number of the plan, ..."	**Former section 11.04(1), renumbered as 11.03(1), was revised to reflect the consolidation of all voluntary correction procedures into a single Voluntary Correction Program (VCP) and also to reflect the expansion of EPCRS to include SIMPLE IRA Plans.** It now provides, "Required documents. A VCP submission must be accompanied by the following documents: (1) Form 5500 or similar information. (a) Qualified Plan. In the case of a Qualified Plan, a copy of the first three pages of the most recently filed Form 5500 series return. In the case of a terminated plan, the Form 5500 must be the one filed for the plan year prior to the plan year for which the Final Form 5500 return was filed. (b) 403(b) Plan, SEP and SIMPLE IRA Plan. In the case of a 403(b) Plan, SEP or SIMPLE IRA Plan submission, if Form 5500 is inapplicable, the information generally included on the first three pages of Form 5500, including the name and number of the plan, and the employer's Employer Identification Number. (c) Anonymous Submission. In the case of an Anonymous Submission, the employee census may be redacted and replaced by numbers that are rounded up."

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Section 11.04(2) provided, "Required Documents. A VCP submission must be accompanied by the following documents: . . . (2) Plan document. A copy of the relevant portions of the plan document. . . . In the case of a SEP, submit the entire plan document."	**Former section 11.04(2), renumbered as 11.03(2)**, was revised to provide, "Required Documents. A VCP submission must be accompanied by the following documents: . . . (2) Plan document. A copy of the ***entire plan document or the*** relevant portions of the plan document. . . . In the case of a SEP ***and a SIMPLE IRA Plan***, submit the entire plan document."
Section 11.04(4) provided, "(4) Copy of Favorable Letter for VCO, VCS, or VCSEP. In the case of VCO, VCS, or VCSEP, a copy of a Favorable Letter."	**Former section 11.04(4) was deleted.**
Section 11.05 provided, "Date VCP fee due generally. Except as provided in section 11.06, the VCP fee under section 12 is due at the time the compliance statement is signed by the Plan Sponsor and returned to the Service. All fees must be submitted by certified or cashier's check made payable to the U.S. Treasury."	**Two revisions were made to former section 11.05, renumbered as 11.04:** 1. It was **revised to require a compliance fee payment to be submitted with each initial VCP request.** 2. It was **revised to update the form of payment for VCP compliance fees** (i.e., VCP fee payments are no longer required to be in the form of certified or cashier's checks). It now provides, "Date VCP fee due generally. Except as provided in section ***11.05***, the VCP fee under section 12 ***must be included with the submission***. All fees must be submitted ***by check*** made payable to the U.S. Treasury.***"***
Section 11.06 provided, "Fee due earlier for VCO, VCS, Anonymous Submission, VCGroup, and VCSEP. In the case of a VCO or VCS submission, the appropriate fee described in section 12.02 or 12.03 must be included with the submission. In the case of a submission made under the Anonymous Submission Procedure, VCGroup, or VCSEP, the initial fee described in section 12.04(1), 12.06, or 12.07(1), respectively, must be included with the submission (and any additional fee is due at the time provided in section 11.05)."	**Former section 11.06, renumbered as 11.05, was revised to reflect the consolidation of voluntary correction procedures into a single Voluntary Correction Program (VCP) and the expansion of EPCRS to include SIMPLE IRA Plans.** It now provides, "Additional fee due for 403(b) Plans, SEPs, SIMPLE IRA Plans and Group Submissions. In the case of a 403(b) Plan, a SEP, a SIMPLE IRA Plan, or a Group Submission, the initial fee described in sections 12.02, 12.04, or 12.05 must be included in the submission (and any additional fee is due at the time the compliance statement is signed by the Plan Sponsor and returned to the Service)."

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Section 11.11 provided, "Designation. The letter to the Service should be designated 'VCP', 'VCO', 'VCS', 'VCT', 'VCSEP', or 'VCGroup', as appropriate, in the upper right hand corner of the letter. In addition if the submission is an Anonymous Submission, the letter should also be designated 'Anonymous Submission Procedure'."	**Former section 11.11, renumbered as 11.10, was revised to reflect the consolidation of voluntary correction procedures into a single VCP and to focus the designation on plan type.**
Section 11.12 provided, "VCP mailing address. All VCP submissions should be mailed to: . . . ."	**Former section 11.12, renumbered as 11.11, was revised to provide,** "VCP mailing address. All VCP submissions ***and accompanying determination applications, if applicable, ...*****"**
Section 12 provided guidance regarding the compliance fees to be paid under each VCP special procedure.	**Section 12 was completely revised and reorganized. Specifically:** **1. It reflects the consolidation of all voluntary correction procedures into a single VCP.** **2. It applies to all VCP requests.** **3. It requires compliance fee payments to be submitted with all initial VCP requests.**
Guidance regarding compliance fees was provided in various subsections (as described below), depending on the VCP special procedure used in resolving the failure(s): • 12.01 – VCP general procedure compliance fee • 12.02 – VCO fee • 12.03 – VCS fee • 12.04 – Fee for Anonymous Submission • 12.05 – VCT fee	**Section 12.02(1) establishes a fixed fee (based on the number of participants/employees) for all VCP requests, including Anonymous submissions, involving Qualified Plans and/or 403(b) Plans**. Section 12.02(1) now provides, "VCP fee for Qualified Plans and 403(b) Plans. (1) Subject to section 12.02(2), the compliance fee for a submission under VCP for Qualified Plans and 403(b) Plans (including Anonymous Submissions) is determined in accordance with the following chart. For 403(b) Plans, the fee is determined with reference to the number of employees rather than participants. . . ." The fee chart is recreated below: **# of participants/employees — fee** **20 or fewer . . . . . $750** **21 to 50 . . . . . $1,000** **51 to 100. . . . . $2,500** **101 to 500. . . . . $5,000** **501 to 1,000 . . . . . $8,000** **1,001 to 5,000. . . . . $15,000** **5,001 to 10,000. . . . . $20,000** **over 10,000. . . . . $25,000**

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Section 12.05(3) provided guidance regarding additional compliance fees that were required for 403(b) Plans with certain Excess Amounts. It provided, "Fee for certain Excess Amounts. Subject to section 12.05(6), the compliance fee for Excess Amounts that are corrected pursuant to section 6.05(2)(b) is equal to the sum of (a) the applicable fee described in section 12.05(2), plus (b) ten percent of the Excess Amounts, adjusted for earnings through the date of the VCT application, contributed or allocated in the calendar year of the VCT application and in the three calendar years prior thereto. If there is a failure to satisfy both the § 403(b)(2) and § 415 limits with respect to a single employee for a year, the fee will take into account only the larger Excess Amount."	**The issue of additional compliance fees for 403(b) Plans with certain Excess Amounts is now addressed in section 12.02(2).** It provides, "In the case of a 403(b) Plan, if the VCP submission includes Excess Amounts that are corrected pursuant to section 6.06(2)(b), a fee equal to at least ten percent of the Excess Amounts, adjusted for earnings through the date of the VCP application, contributed or allocated in the calendar year of the VCP application and in the three calendar years prior thereto will be imposed. If there is a failure to satisfy both the § 403(b)(2) and § 415 limits with respect to a single employee for a year, the fee will take into account only the larger Excess Amount. This fee is in addition to the 403(b) Plan compliance fee in section 12.02(1)."
Section 12.01(3) provided, "VCP fee for nonamenders. The VCP compliance fee for a submission that includes only a Plan Document Failure that is solely a failure to amend the plan timely to comply with required tax law changes is determined in accordance with section 12.01(1), as follows: (a) GUST (for plans filed after September 3, 2002), UCA or OBRA '93 model amendments only – the fee is the halfway point between the minimum amount and the presumptive amount of the applicable fee range. (b) TRA '86 - the fee is the presumptive amount of the applicable fee range, and clause (a) does not apply. (c) TEFRA, DEFRA, or REA – the fee is the halfway point between the presumptive amount and the maximum amount of the applicable fee range, and clauses (a) and (b) do not apply. (d) ERISA - the fee is the maximum amount of the applicable fee range, and clauses (a), (b), and (c) do not apply."	**The issue of VCP compliance fees for nonamenders is now addressed in section 12.03. All such fees will be determined in accordance with the chart contained in section 12.02(1), and there is an incentive for Plan Sponsors to quickly correct these failures.** Section 12.03 provides, "VCP fee for nonamenders. The compliance fee for plans that have not been amended for tax legislation changes within the plan's remedial amendment period (nonamenders (**includes EGTRRA nonamenders**)) is determined in accordance with the chart in section 12.02. **The applicable fee is reduced by 50% for nonamenders that submit under VCP within a one-year period following the expiration of the plan's remedial amendment period for complying with tax law changes**. For example, the fee for a "GUST nonamender plan" with 700 participants submitted within the one-year period following the expiration of the plan's remedial amendment period for GUST changes would be $4,000. See section 5.01(4)(a) for the definition of GUST."

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Section 12.06 provided, "VCGroup fees. The compliance fee for a VCGroup submission is based on the number of plans to which the compliance statement is applicable. The initial fee is $10,000. In the case of a submission with only corrections under Appendix A or B, an additional fee is due equal to the product of the number of plans in excess of 20 times $125, up to a maximum of $40,000; in any other case, the additional fee is equal to the product of the number of plans in excess of 20 times $250, up to a maximum of $90,000."	**The issue of VCP compliance fees for Group submissions is now addressed in section 12.04. In addition, the maximum fee (for more than 20 affected plans) has been reduced.** Section 12.04 provides, "*VCP fee for Group Submission*. The compliance fee for a *Group* Submission is based on the number of plans *affected by the failure as described in* the compliance statement. The initial fee *for the first 20 plans* is $10,000. *A*n additional fee is due equal to the product of the number of plans in excess of 20 *multiplied by $250*, up to a maximum of ***$50,000*.**"
Section 12.07 provided, "VCSEP fees. The applicable VCSEP compliance fee is the same as the fee for VCP in section 12.01, subject to the following: (1) In the case of a SEP with Operational Failures only, the compliance fee is determined in accordance with the VCO fee schedule in section 12.02, except that the fee is determined solely on the basis of the number of plan participants. (2) In any case in which a SEP correction is not similar to a correction for a similar Qualification Failure (as provided under section 6.08(1)), the Service may impose an additional fee. If the failure involves an overcontribution to a SEP that is not the result of a failure to satisfy a statutory limit on contributions to a SEP and the Plan Sponsor retains the overcontribution in the SEP, a fee equal to at least ten percent of the overcontribution excluding earnings will be imposed. This is in addition to the VCSEP compliance fee."	**The issue of VCP compliance fees for SEPs is now addressed in section 12.05. In addition, guidance regarding VCP compliance fees for SIMPLE IRA Plans has been included.** Section 12.05 provides, "***VCP fee for SEPs and SIMPLE IRA Plans***. (1) The compliance fee for a SEP or a SIMPLE IRA Plan submission (including an Anonymous Submission) is $500. (2) In any case in which a SEP *or SIMPLE IRA Plan* correction is not similar to a correction for a similar Qualification Failure (as provided under section 6.08(1)), the Service may impose an additional fee. If the failure involves an *Excess Amount* to a SEP *or a SIMPLE IRA Plan* and the Plan Sponsor retains the *Excess Amount* in the SEP *or SIMPLE IRA Plan*, a fee equal to at least ten percent of the *Excess Amount* excluding earnings will be imposed. This is in addition to the *SEP or SIMPLE IRA Plan compliance fee set forth in section 12.05(1)*."

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Section 12.01(4) provided, "VCP general procedure compliance fee. . . . (4) Egregious failures. In cases involving failures that are egregious (as described in section 4.09), (a) the maximum compliance fee applicable to the plan under the chart in 12.01(1) is increased to 40 percent of the Maximum Payment Amount and (b) no presumptive amount applies." Section 12.05(6) provided, "VCT Fee. . . . (6) Fee for egregious failures. In cases involving failures that are egregious, the maximum VCT compliance fee applicable to the plan is increased to 40 percent of the Total Sanction Amount, and no presumptive amount applies."	**The issue of VCP compliance fees for Qualified Plans and 403(b) Plans with egregious failures is now addressed in section 12.06. In addition, the guidance has been expanded to apply to SEPs and SIMPLE IRA Plans.** Section 12.06 provides, "VCP fee for egregious failures. Notwithstanding the provisions of sections 12.02 and 12.05, in cases involving failures that are egregious (as described in section 4.08), the compliance fee for Qualified Plans, 403(b) Plans, SEPs and SIMPLE IRA Plans is the greater of the fee that would be determined under sections 12.02 and 12.05, or an amount equal to a negotiated percentage of the Maximum Payment Amount (Total Sanction Amount for a 403(b) Plan), such percentage not to exceed 40 percent."
Section 12.08 provided, "Establishing amount of assets and number of plan participants. Compliance fees under this section 12 are calculated by the Plan Sponsor using the numbers from the most recently filed Form 5500 series to establish the fee. Thus, with respect to the 1999 Form 5500, the Plan Sponsor would use the number shown on line 7(f) (or the equivalent line on the Form 5500 C/R or EZ) to establish the number of plan participants and would use line 31(f) (or the equivalent line on the Form 5500 C/R or EZ) to establish the amount of plan assets. If the submission involves a plan with Transferred Assets and no new incidents of the failure occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the Plan Sponsor may calculate the amount of plan assets and number of plan participants based on the Form 5500 information that would have been filed by the Plan Sponsor for the plan year that includes the employer transaction if the Transferred Assets were maintained as a separate plan. In the case of a SEP not required to file a Form 5500, the Plan Sponsor may use other reasonable information to determine the amount of plan assets and the number of participants."	**Two revisions were made to former section 12.08, renumbered as 12.07:** 1. **References to plan assets were removed** since assets are no longer considered when determining the VCP compliance fee. 2. References to line items on Form 5500 were **revised to reference the 2002 version of Form 5500** (instead of the 1999 version). Section 12.07 now provides, "Establishing amount of assets and number of plan participants. Compliance fees under this section 12 are *determined based on the number of plan participants. For new plans and ongoing plans, the number of plan participants is determined* from the most recently filed Form 5500 series. Thus, with respect to the *2002* Form 5500, the Plan Sponsor would use the number shown in item 7f (or the equivalent item on the Form 5500 C/R or EZ) to establish the number of plan participants. *In the case of a terminated plan, the Form 5500 used to determine the number of plan participants must be the one filed for the plan year prior to the plan year for which the Final Form 5500 return was filed.* If the submission involves a plan with Transferred Assets . . . , the Plan Sponsor may calculate the number of plan participants . . . . In the case of a SEP *or SIMPLE IRA Plan* not required to file a Form 5500, ..."

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Section 14.02 described the factors considered when determining the amount of the monetary sanction imposed under the Audit Closing Agreement Program ("Audit CAP"). It provided, "Factors considered. Factors include: (1) the steps taken by the Plan Sponsor to ensure that the plan had no failures, (2) the steps taken to identify failures that may have occurred, (3) the extent to which correction had progressed before the examination was initiated, including full correction, (4) the amount of the fee the Plan Sponsor would have paid under section 12 for correcting the failures, (5) the number and type of employees affected by the failure, (6) the number of nonhighly compensated employees who would be adversely affected if the plan were not treated as qualified or as satisfying the requirements of § 403(b) or § 408(k), (7) whether the failure is a failure to satisfy the requirements of § 401(a)(4), § 401(a)(26), or § 410(b), either directly or through § 403(b)(12), (8) the period over which the failure occurred (for example, the time that has elapsed since the end of the applicable remedial amendment period under § 401(b) for a Plan Document Failure), and (9) the reason for the failure (for example, data errors such as errors in transcription of data, the transposition of numbers, or minor arithmetic errors). Factors relating only to Qualified Plans also include . . . . Additional factors relating only to 403(b) Plans include . . . ."	**Two revisions were made to section 14.02:** 1. **Former factor (4), relating to all plans, was deleted to remove the reference to consideration of the VCP compliance fee** (i.e., the fee that would have applied if the Plan Sponsor had submitted a VCP request for the failure(s) discovered on audit). 2. **A new factor**, relating only to Qualified Plans, **was inserted in the 2nd paragraph as (4).** Section 14.02 now provides, "Factors considered. Factors include: (1) the steps taken by the Plan Sponsor to ensure that the plan had no failures, (2) the steps taken to identify failures that may have occurred, (3) the extent to which correction had progressed before the examination was initiated, . . . ***(4)*** the number and type of employees affected by the failure, ***(5)*** the number of nonhighly compensated employees who would be adversely affected if the plan were not treated as qualified or as satisfying the requirements of § 403(b), § 408(k) or § 408(p), ***(6)*** whether the failure is a failure to satisfy the requirements of § 401(a)(4), § 401(a)(26), or § 410(b), either directly or through § 403(b)(12), ***(7)*** the period over which the failure occurred (for example, the time that has elapsed since the end of the applicable remedial amendment period under § 401(b) for a Plan Document Failure), and ***(8)*** the reason for the failure (for example, data errors such as errors in transcription of data, the transposition of numbers, or minor arithmetic errors). Factors relating only to Qualified Plans also include . . . . ***(4) whether the failure(s) were discovered during the determination letter process."*** Additional factors relating only to 403(b) Plans include . . . ."

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Section 16 provided, "EFFECTIVE DATE. This revenue procedure is effective July 22, 2002."	Section 16 was revised to provide, "**EFFECTIVE DATE**. This revenue procedure is generally effective October 1, 2003; however, plan sponsors are permitted, at their option, to apply the provisions of this revenue procedure on or after June 9, 2003. Specifically, unless a plan sponsor applies the provisions of this revenue procedure earlier, this revenue procedure is effective: (1) with respect to SCP, for failures for which correction is not complete before October 1, 2003; (2) with respect to VCP, for applications submitted on or after October 1, 2003; and (3) with respect to Audit CAP, for examinations begun on or after October 1, 2003."
Appendix A, section .01 described the "General rule", which provided that " . . . The correction methods in this appendix are acceptable under SCP and VCP (including VCS). Additionally, the correction methods and the earnings adjustment methods in Appendix B are acceptable under SCP and VCP (including VCS but not VCT)."	**Appendix A, section .01 was revised to include the following sentence:** "***To the extent a failure listed in this appendix could occur under a 403(b) Plan, a SEP or a SIMPLE IRA Plan, the correction method listed for such failure may be used to correct the failure."***
Appendix A, section .07 provided, "Failure to obtain participant and/or spousal consent for a distribution subject to the participant and spousal consent rules under §§ 401(a)(11), 411(a)(11) and 417. The permitted correction method is to give each affected participant a choice between providing informed consent for the distribution actually made or receiving a qualified joint and survivor annuity. In order to use this VCS correction method, the Plan Sponsor must have contacted each affected participant and spouse (to whom the participant was married at the annuity starting date) and received responses from each such individual before requesting consideration under VCS. In the event that participant and/or spousal consent is required but cannot be obtained, the participant must receive a qualified joint and survivor annuity based on the monthly amount that would have been provided under the plan at his or her retirement date. . . ."	**Appendix A, section .07 was revised to remove the second sentence.** Appendix A, section .07 now provides, "Failure to obtain participant and/or spousal consent for a distribution subject to the participant and spousal consent rules under §§ 401(a)(11), 411(a)(11) and 417. The permitted correction method is to give each affected participant a choice between providing informed consent for the distribution actually made or receiving a qualified joint and survivor annuity. In the event that participant and/or spousal consent is required but cannot be obtained, the participant must receive a qualified joint and survivor annuity based on the monthly amount that would have been provided under the plan at his or her retirement date. . . ."

CHANGES MADE TO EPCRS
BY REVENUE PROCEDURE 2003-44, IRB 2003-25

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Appendix B, section 1.01(2) provided, "This appendix does not apply to 403(b) Plans or SEPs. Accordingly, sponsors of 403(b) Plans or SEPs cannot rely on the correction methods and the earnings adjustment methods under this appendix."	**Appendix B, section 1.01(2) was revised to provide,** "***To the extent a failure listed in this appendix could occur under a 403(b) Plan, SEP, or a SIMPLE IRA Plan, the correction method listed for such failure may be used to correct the failure."***
Appendix B, section 2.07(3)(a) provided, "Correction by Amendment Under VCP and SCP. . . . (3) Inclusion of Ineligible Employee Failure. (a) Plan Amendment Correction Method. The Operational Failure of including an ineligible employee in the plan who has not completed the plan's minimum age or service requirements may be corrected under VCP and SCP by using the plan amendment correction method set forth in this paragraph. The plan is amended retroactively to change the eligibility provisions to provide for the inclusion of the ineligible employee to reflect the plan's actual operations. The amendment may change the eligibility provisions with respect to only those ineligible employees that were wrongly included, and only to those ineligible employees, provided (i) the amendment satisfies § 401(a) at the time it is adopted, (ii) the amendment would have satisfied § 401(a) had the amendment been adopted at the earlier time when it is effective, and (iii) the employees affected by the amendment are predominantly nonhighly compensated employees."	**Appendix B, section 2.07(3)(a) was revised to permit correction by retroactive plan amendment for Operational Failures where an ineligible employee began participating in the plan on a date earlier than the applicable plan entry date.** It now provides, "*Correction by Amendment*. . . . (3) Inclusion of Ineligible Employee Failure. (a) Plan Amendment Correction Method. The Operational Failure of including an ineligible employee in the plan who *either (i)* has not completed the plan's minimum age or service requirements**,** *or (ii) has completed the plan's minimum age or service requirement but became a participant in the plan on a date earlier than the applicable plan entry date***,** may be corrected under VCP and SCP by using the plan amendment correction method set forth in this paragraph. The plan is amended retroactively to change the eligibility *or entry date* provisions to provide for the inclusion of the ineligible employee to reflect the plan's actual operations. The amendment may change the eligibility *or entry date* provisions . . . ."
Not applicable.	**Appendix D was added to provide two sample formats to assist Plan Sponsors in preparing VCP submissions.** The first sample is a generic format that can be used for Operational Failures, Demographic Failures, Employer Eligibility Failures, and Plan Document Failures (other than nonamenders). The second sample is a format designed specifically for nonamenders.